

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

THE CLAUSEN LAW FIRM, PLLC, on  
behalf of itself and all others similarly situated )

Plaintiff, )

v. )

NATIONAL ACADEMY OF CONTINUING  
LEGAL EDUCATION )

Defendant. )

No. 2:10-cv-01023

NOTICE OF REMOVAL OF CIVIL  
ACTION TO FEDERAL COURT

TO: The Honorable Judges of the United States District Court for the Western District of  
Washington at Seattle

Pursuant to 28 U.S.C. §§ 1331, 1332, 1441, and 1446, defendant National Academy of  
Continuing Legal Education hereby removes the above-captioned action from the Superior  
Court of Washington for King County to this Court on diversity of citizenship and the Class  
Action Fairness Act. The following statement is submitted in accordance with 28 U.S.C.  
§ 1446:

**I. BACKGROUND**

1. Defendant National Academy of Continuing Legal Education ("NACLE") is a  
New York corporation with its principal place of business in West Hampstead, New York.

2. Plaintiff The Clausen Law Firm, PLLC ("Clausen") is a Washington  
Professional Limited Liability Company. Clausen commenced this action individually and as

NOTICE OF REMOVAL OF CIVIL ACTION TO  
FEDERAL COURT - 1

1 class representative of a putative class of similarly situated persons and entities against the  
 2 NACLE in the Superior Court of Washington for King County. Plaintiff's Complaint for  
 3 Injunctive Relief and Incidental Damages Arising out of Transmission of Unsolicited Faxes  
 4 was served on the Defendant's President, Guy Tsadik, on May 21, 2010. Declaration of Erin  
 5 M. Garvey ("Garvey Decl."), ¶ 2. Plaintiff's Complaint was filed with the King County  
 6 Superior Court on June 21, 2010, and is now pending as Cause No. 10-2-21857-2 SEA.  
 7 Garvey Decl., ¶ 3. Plaintiff's Complaint purports to assert claims against NACLE for  
 8 violations of 47 U.S.C. §227 *et. seq.*, RCW 80.36.540, RCW 19.86.020 (the Washington  
 9 Consumer Protection Act, "CPA"), and RCW 7.24.010. Plaintiff alleges the purported class is  
 10 so numerous that joinder of all members is impracticable. A true and correct copy of the  
 11 Summons and Complaint is attached to the Garvey Decl. as Exhibit A.

## 12 II. STATUTORY REQUIREMENTS—CLASS ACTION FAIRNESS ACT

13 3. In 2005, Congress enacted the Class Action Fairness Act of 2005, 28 U.S.C.  
 14 § 1332(d)(2) ("CAFA"), in response to a concern that, "[o]ver the last decade, there have been  
 15 abuses of the class action device that have ... harmed class members with legitimate claims  
 16 and defendants that have acted responsibly ... and undermined public respect for our judicial  
 17 system." Pub.L. 109-2, § 2(a)(2). Congress recognized that these abuses "undermine the  
 18 National judicial system, the free flow of interstate commerce, and the concept of diversity  
 19 jurisdiction as intended by the framers of the United States Constitution, in that State and  
 20 local courts are keeping cases of national importance out of Federal court; [and] sometimes  
 21 acting in ways that demonstrate bias against out-of-state defendants; ..." *Id.*, §2(a)(4).

22 4. CAFA was intended to help correct these abuses by "restor[ing] the intent of  
 23 the framers of the United States Constitution by providing for Federal court consideration of  
 24 interstate cases of national importance under diversity jurisdiction." Pub.L. 109-2, § 2(b)(2).  
 25 Accordingly, under CAFA, district courts "shall have original jurisdiction of any civil action  
 26 in which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of

NOTICE OF REMOVAL OF CIVIL ACTION TO  
 FEDERAL COURT - 2

1 interests and costs, and is a class action in which ... any member of a class of plaintiffs is a  
2 citizen of a State different from any defendant ... ." For purposes of determining whether the  
3 amount in controversy requirement is met, "claims of the individual class members shall be  
4 aggregated to determine whether the matter in controversy exceeds the sum or value of  
5 \$5,000,000, exclusive of interests and costs." 28 U.S.C. § 1332(d)(6).

6 5. Although Defendant denies that Plaintiff will ever be able to satisfy the  
7 standards for class certification, the King County Action satisfies CAFA's jurisdictional  
8 requirements. To begin, the King County Action satisfies the minimum diversity required by  
9 CAFA. Plaintiff, upon information and belief, is a citizen of Washington. By contrast, the  
10 NACLE is a citizen of New York. Accordingly, at least one member of the proposed class is a  
11 citizen of a state different than the Defendant.

12 6. Plaintiff's Complaint does not allege a total aggregate sum or value for all  
13 claims asserted by Plaintiff on behalf of itself and all putative class members. However,  
14 based on the allegations of the Complaint, including the specific claims asserted by Plaintiff,  
15 Defendant has a good-faith belief that the matter in controversy exceeds the sum or value of  
16 \$5,000,000, and thus satisfies 28 U.S.C. § 1332(d)(2). Defendant's belief that the matter in  
17 controversy exceeds the sum or value of \$5,000,000 is based on the following:

18 a. Plaintiff's proposed class presumably covers a class period  
19 commensurate with the statute of limitations for CPA claims (from November of 2009, when  
20 the call alleged in the Complaint took place) and alleges upon information and belief that the  
21 Class is so numerous that joinder is impracticable. *See* Complaint at ¶¶ 10, 18.

22 b. The Defendant sent more than 4,000 facsimiles to recipients who  
23 consented to receiving them in the four years prior to 2009. Declaration of Guy Tsadik, ¶ 5.

24 c. Plaintiff contends that Defendant's alleged violations of the CPA  
25 caused Plaintiff and all other similarly situated members of the putative class incidental  
26

NOTICE OF REMOVAL OF CIVIL ACTION TO  
FEDERAL COURT - 3

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1 statutory damages of \$500 per fax that should be trebled, along with costs of suit and  
2 attorneys fees. Complaint, ¶¶ 25, G.

3 d. Under Washington law, if Plaintiff were to prevail, the CPA permits an  
4 award of treble damages of up to \$10,000 to Plaintiff, as well as all represented class  
5 members who suffered actual damages. *See Smith v. Behr Process Corp.*, 113 Wn. App. 306,  
6 345-46, 54 P.3d 665 (2002).

7 e. While Defendant vehemently denies that it violated the CPA, and  
8 specifically denies the claims made by Plaintiff will satisfy the requirements of Rule 23 or  
9 that any putative class member is entitled to recover monetary or statutory damages in any  
10 amount, based on Plaintiff's allegation that each putative class member is entitled to \$1,500  
11 per facsimile it received, and given that Defendant sent over 4,000 facsimiles, Defendant has  
12 a good-faith basis to believe that the amount in controversy exceeds CAFA's \$5,000,000  
13 requirement. *See Korn v. Polo Ralph Lauren Corp.*, 536 F.Supp.2d 1199, 1205 (E.D. Cal.  
14 2008) ("Where a statutory maximum is specified, courts may consider the maximum statutory  
15 penalty available in determining whether the jurisdictional amount in controversy requirement  
16 is met.").

### 17 III. NO CAFA EXCEPTIONS APPLY

18 7. Although Defendant denies that it is its burden to show that CAFA's  
19 exceptions to jurisdiction apply, none do. As discussed above, Plaintiff is a resident of  
20 Washington but Defendant is not a Washington resident. Plaintiff has not limited class  
21 membership to Washington residents. Based on the Plaintiff's Complaint, Defendant has a  
22 good faith belief that the exceptions set forth in 28 U.S.C. § 1332(d)(3) do not apply.

23 8. Next, the "home-state" exceptions set forth in 28 U.S.C. § 1332(d)(4)(A) &  
24 (B) do not apply. Section 1332(d)(4)(A) applies where two-thirds of the members of the  
25 proposed class share citizenship with at least one defendant (a) "from whom significant relief  
26 is sought," (b) "whose alleged conduct forms a significant basis for the claims asserted by the

NOTICE OF REMOVAL OF CIVIL ACTION TO  
FEDERAL COURT - 4

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plaintiff class,” and (c) “who is a citizen of the State in which the action was originally filed.” 28 U.S.C. § 1332(d)(4)(A). Likewise, Section 1332(d)(4)(B) applies where two-thirds of the members of the proposed class and all the “primary defendants” are citizens of the forum state. 28 U.S.C. § 1332(d)(4)(B).

#### IV. PROCEDURAL REQUIREMENTS

9. This Notice of Removal is timely filed within thirty (30) days from the date on which the Summons and Complaint were served and removable pursuant to 28 U.S.C. § 1446(b).

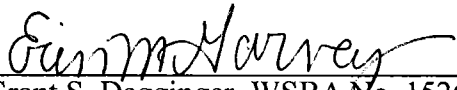
10. This Court is the United States District Court for the district and division within which plaintiff’s action is pending. *See* 28 U.S.C. § 1441(a).

11. Venue is proper in this district pursuant to 28 U.S.C. § 1391(a). The claims asserted in the Complaint arose in this district, and Defendant does business in this district.

Therefore, Defendant gives notice that Cause No. 10-2-21857-2 SEA has been removed from King County Superior Court to this Court.

DATED this 21<sup>st</sup> day of June, 2010.

LANE POWELL PC

By   
 Grant S. Degginger, WSBA No. 15261  
 Barbara J. Duffy, WSBA No. 18885  
 Erin M. Garvey, WSBA No. 42454  
 Attorneys for Defendant National Association of  
 Continuing Legal Education

NOTICE OF REMOVAL OF CIVIL ACTION TO  
 FEDERAL COURT - 5

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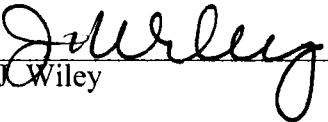
**CERTIFICATE OF SERVICE**

The undersigned certifies that on the 21<sup>st</sup> day of June, 2010, I caused to be delivered via electronic mail a copy of the foregoing document to the following counsel:

Kim Williams  
Rob Williamson  
Williamson & Williams  
187 Parfitt Way SW #250  
Bainbridge Island, WA 98110

I declare under penalty of perjury under the laws of the State of Washington and the United States of America that the foregoing is true and correct.

Signed at Seattle, Washington, this 21<sup>st</sup> day of June, 2010.

  
J. Wiley

NOTICE OF REMOVAL OF CIVIL ACTION TO  
FEDERAL COURT - 6

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